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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 129

ROBERT LAKEN,

Petitioner,

vs.

JOAN CORNELISSER,

Respondent.

Petition for Rehearing

JOHN R. SHIVELY,
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Counsel for Petitioner.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Robert Laken, prays that this Court grant a rehearing of its order of October 12, 1964, denying the petition for writ of certiorari, and that a writ of certiorari issue to review a judgment of the Appellate Court of Illinois, Second District, affirming a judgment of the County Court of Winnebago County in the above entitled case as prayed in the petition filed on May 29, 1964, herein.

Statement of the Case.

This is a civil action.

The complaint which was filed in the Circuit Court of Winnebago County is based upon the Illinois Paternity Act.

In the complaint the plaintiff, Joan Cornmesser, states, among other things, that "the said Plaintiff is now pregnant with a child in the County of Winnebago, State of Illinois, which, if born alive, may be deemed by law 'a child born out of wedlock' and that said child was fathered by the Defendant, Robert Laken."

In the prayer for relief she prays, among other things, that "the said Defendant be ordered and decreed to pay sufficient sums of money for the Plaintiff's expenses incurred by her pregnancy, confinement and recovery and for the said child's support, maintenance, education and welfare," and that the court issue forthwith a warrant for the arrest of the defendant. There is, however, no prayer that the paternity of the child may be established which prayer is absolutely necessary.

A warrant was issued. The defendant was arrested. He was required to give bond.

The case was submitted to a jury.

The verdict is, as follows:

We, the Jury, find the defendant, Robert Laken, is the real father of said child born out of wedlock of the said Joan Cornmesser, an unmarried woman.

The record shows that she has two children.

The trial court did not enter judgment on the verdict, but entered an order of support.

The defendant appealed.

Questions Not Previously Presented.

Whether a State statute which authorizes the issuance of a warrant, the arrest of the accused, and his imprisonment until the examination of the complainant in his presence, in a civil action, violates the 14th Amendment to the Constitution of the United States.

Whether the State deprived the petitioner of his property in violation of the 14th Amendment to the Constitution of the United States because the amount of support was fixed without further hearing.

Civil Actions.

The constitutional guaranty of due process of law does not require that parties shall be entitled to any particular form of action or method of procedure for the protection of rights and the redress of wrongs. It does, however, require that the substance of property rights be preserved, that the courts accord the parties due process in determining adjective and substantive law, and that some adequate and appropriate remedy be afforded for the vindication of personal and property rights. It also requires that such remedy shall be by a regular and orderly mode of procedure by due course of law, that relief be afforded in a court of competent jurisdiction, and that the defendant shall have notice, and an opportunity to be heard in his defense. Such essentials constitute the basic requisites of due process of law.

No particular form of process or notice is necessary to constitute due process of law. It does not, however, authorize the issuance of a warrant and the arrest of the accused in a civil action.

This is the only civil action which authorizes the issuance of a warrant, the arrest of the accused, and his imprisonment until the examination of the complainant in his presence. The court may then bind the accused person in bond, with sufficient security, to appear in court. In neglect or refusal to give bond and security, the court shall commit the accused to the county jail, there to be held to answer the complaint.

These provisions are malicious. They violate the 14th Amendment to the Constitution of the United States. They are unconstitutional. They should be so declared by the court.

Hearing.

In a paternity proceeding a party, upon demand is entitled to a trial by jury. The court shall cause an issue to be made up whether the person charged is the father of the child.

On the trial, the jury found the defendant "is the real father of said child," but the trial court did not enter judgment on the verdict.

The Paternity Act provides that if such judgment is entered the court shall take evidence upon the requirements of the child for its support, maintenance, education and welfare, and upon the expenses of the mother during pregnancy, confinement and recovery.

In determining the amount of support and confinement expenses to be charged the father, the court shall take into account not only his financial condition and circumstances, but also the income and resources of the mother which are or may be available for the support of the child.

The record shows that the trial court without further hearing fixed the amount of support. Evidence of the

amount needed for support must be presented before a determination of the amount of support is made. The trial court should not fix such amount arbitrarily, but upon evidence. The defendant was deprived of his property without due process of law.

Conclusion.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that a rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Appellate Court of Illinois, Second District.

Respectfully submitted,

JOHN R. SNIVELY,
Counsel for Petitioner.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58(2) of this Court.

JOHN R. SNIVELY,
Counsel for Petitioner.